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July 23, 1996

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BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20057

RECEIVED

JUL 23 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WT Docket No. 96-59 - Notice of Ex Parte Meetings

Dear Mr. Caton:

During the time period from July 12, 1996 through July 19, 1996, a series of ex parte meetings were held between representatives of The National Paging & Personal Communications Association ("NPPCA"), Digivox Corporation ("Digivox"), Personal Technology Services, Inc. ("PTS") and the Commission staff as listed below:

July 11, 1996	David R. Siddall, Office of Commissioner Ness Michael Walker, NPPCA Eliot J. Greenwald, Fisher Wayland Cooper Leader & Zaragoza L.L.P. ("Fisher Wayland"), representing NPPCA John Prawat, Digivox
July 15, 1996	Suzanne Toller, Office of Commissioner Chong Eliot J. Greenwald, Fisher Wayland, representing NPPCA John Prawat, Digivox Jeffrey Ross, Patton Boggs, L.L.P. ("Patton Boggs"), representing Digivox and PTS
July 16, 1996	Rudolfo M. Baca, Office of Commissioner Quello Michael Walker, NPPCA Eliot J. Greenwald, Fisher Wayland, representing NPPCA Jeffrey Ross, Patton Boggs, representing Digivox and PTS

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July 16, 1996	Michele Farquhar, Chief, Wireless Telecommunications Bureau D'Wana Speight, Wireless Telecommunications Bureau Jay Markley, Wireless Telecommunications Bureau Kathleen O'Brian Ham, Auctions Division John M. Spencer, Auctions Division Peter A. Tenhula, Office of General Counsel Evan R. Kwerel, Office of Plans and Policy Michael Walker, NPPCA Eliot J. Greenwald, Fisher Wayland, representing NPPCA Townsend Van Fleet, The Van Fleet-Meredith Group, representing NPPCA John Prawat, Digivox J. Jeffrey Craven, Patton Boggs, representing Digivox and PTS
July 17, 1996	Catherine Sandoval, Office of Communications Business Opportunities Eliot J. Greenwald, Fisher Wayland, representing NPPCA John Prawat, Digivox Jeffrey Ross, Patton Boggs, representing Digivox and PTS
July 19, 1996	Jackie Chorney, Office of the Chairman Catherine Sandoval, Office of Communications Business Opportunities Peter A. Tenhula, Office of General Counsel Eliot J. Greenwald, Fisher Wayland, representing NPPCA John Prawat, Digivox Paul C. Besozzi, Patton Boggs, representing Digivox and PTS

In addition, the undersigned, on behalf of NPPCA had several telephone conversations with Peter A. Tenhula, Office of General Counsel and Catherine Sandavol, Office of Communications Business Opportunities. The undersigned had a very brief discussion with William E. Kennard, General Counsel of the Commission. Michael Walker, NPPCA, and the undersigned had an extremely brief discussion with Commissioner Rachelle B. Chong.

In each of the meetings it was explained that NPPCA is representing a coalition that is concerned with the substance and timing of the Commission's rules for the broadband PCS F Block auction. NPPCA is a trade association of small businesses in the wireless telecommunications industry. Digivox and PTS are two members of the coalition. The timing of the auction is a problem because the Commission gave small businesses only 30 days to adjust to the new F Block rules which included drastic changes from the rules that were in effect for the C Block auction. Thirty days is insufficient time to rework business plans and present them to investors in time for approval. Moreover, the Commission violated the Contract with America Advancement Act of 1996 by failing to provide for a sixty day implementation period for a major rule change.

Three substantive changes in the rules were discussed. First, the interest-only period for small businesses was reduced from six years in the C Block to two years in the F Block. The down payment was doubled from ten percent in the C Block to twenty percent in the F Block. Lastly, the upfront payment was quadrupled from 1.5 cents per MHz per pop in the C Block to six cents per MHz per pop in the F Block. It was discussed that these changes work to preclude or severely inhibit many small businesses from participating in the F Block auction, and that this result is inconsistent with Section 309(j) of the Communications Act.

In particular, it was discussed that a two year interest only period requires the repayment of principal at the tail end of the anticipated construction period, before significant revenues can be generated. Not only does this shortened interest only period discourage small business bidders, but it sets up small businesses for failure, by requiring repayment just as they are launching into service and requiring substantial amounts of capital for marketing and other operational needs. Section 309(j) was written to encourage the Commission to develop rules to ensure the participation of small businesses with limited cash resources. The new F Block rules, especially the reduction of the interest only period, accomplishes the opposite result.

The coalition also explained that doubling the down payment will preclude or severely hinder many small business applicants who are short on cash and need to conserve their cash until they can generate revenues. Lastly, the coalition explained that although it does not oppose some increase in the upfront payment to discourage insincere bidders, it opposes a payment as high as six cents per MHz per pop, because it works against small businesses bidding in small markets. In particular, the per pop price of the smaller BTA's is much lower than the per pop price of the larger markets. Therefore, companies intending to bid for those markets would be unable to participate or would be required to put up substantially more money than would represent five percent of their bid amounts and would thus need to seek a refund. This works against small businesses that have a pressing need for cash.

In general, Commission staff indicated that the Chairman and others were inalterably opposed to any change in the auction dates. Suzanne Toller and Jackie Chorney each asked whether it made sense to separate the F Block from the D and E Blocks so that the F Block rules could be revisited while the D and E Block auctions progressed. John Prawat explained that his preference was for all three auctions to take place simultaneously, although his company would be unable to participate in the auction with the current deadline. Therefore, if the only way to postpone the F Block was to uncouple it from the D and E Blocks, he would support the uncoupling. The undersigned explained that the members of the coalition were divided on this issue, and that those who opposed the uncoupling viewed the uncoupling as going from the frying pan into the fire. The main concern was that uncoupling would eliminate the possibility of crossover bidding between the F Block and the D and E Blocks by the larger F Block bidders. Crossover bidding would make more room in the F Block for the smaller companies, even if they did not crossover bid themselves.

The Commission staff argued that the rule changes were effected to discourage speculative bidding and to prevent defaults. The coalition countered that the rule changes were an overreaction to two C Block defaults, and that the small businesses that Congress wanted to

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see participate in the auctions would be precluded. Therefore, Commission policy should not be driven by an overriding concern about defaults. Some increase in the upfront payments, perhaps to two or three cents per MHz per pop would be justified, but six cents is too much. The coalition also explained that for the same reason why a first time home buyer without a great deal of current cash but a future expectation of income needs a 90 percent mortgage rather than an 80 percent mortgage, a small business that is tight on cash now, but whose business plan calls for the generation of cash flow, needs a ten percent down payment.

Lastly, the Commission argued that the repayment of principal at two years is needed to prevent defaults six years out. The coalition explained that this makes little sense, because early repayment of principal either discourages small businesses from ever participating in the auction or sets them up for failure at the end of the anticipated two year build-out period. Instead, by having a lengthy interest only period, small businesses will have an opportunity to develop a business that is serving the public and generating revenues. An ongoing business with financial difficulties would not default to the Commission. Instead, the lenders and other backers would make sure that there was a reorganization or other work out rather than lose the entire loan or investment. During a reorganization, the public would continue to receive service, as it did during the reorganization of General Cellular Corporation several years ago.

The issues discussed above and in the various ex parte meetings are discussed in depth in the Petition For Reconsideration filed by NPPCA, PTS and Digivox on July 19, 1996.

Very truly yours,



Eliot J. Greenwald

cc: Jackie Chorney, Office of the Chairman
Rudolfo M. Baca, Office of Commissioner Quello
David R. Siddall, Office of Commissioner Ness
Suzanne Toller, Office of Commissioner Chong
William E. Kennard, General Counsel
Peter A. Tenhula, Office of General Counsel
Michele Farquhar, Chief, Wireless Telecommunications Bureau
D'Wana Speight, Wireless Telecommunications Bureau
Jay Markley, Wireless Telecommunications Bureau
Kathleen O'Brian Ham, Auctions Division
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